

U.S. COURT OF APPEALS CASE NO. \_\_\_\_\_

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

COUNTRYWIDE FINANCIAL  
CORPORATION; COUNTRYWIDE  
HOME LOANS, INC.; and BANK OF  
AMERICA CORPORATION,

*Petitioners,*

v.

NATIONAL LABOR RELATIONS  
BOARD,

*Respondent.*

Case No. \_\_\_\_\_

**PETITION FOR REVIEW**

Pursuant to Section 10(f) of the National Labor Relations (“Act”),  
29 U.S.C. § 160(f), Countrywide Financial Corporation, Countrywide Home  
Loans, Inc., and Bank of America Corporation (collectively, “Petitioners”)  
hereby petition the Court to review and set aside the decision and order of the  
National Labor Relations Board (“NLRB”) issued against Petitioners on  
August 14, 2015, in NLRB Case Nos. 31-CA-072916 and 31-CA-072918, and  
reported as 362 NLRB No. 165 (attached hereto as Exhibit “A”).

Petitioners are aggrieved by the NLRB's order, which is not supported by substantial evidence and is contrary to law. Citing *D.R. Horton, Inc.*, 357 NLRB No. 184, 2012 WL 36274 (Jan. 3, 2012), the NLRB held, among other things, that Petitioners, individually and collectively, committed an unfair labor practice because they (1) maintained an unlawful arbitration agreement and (2) filed a motion to compel individual arbitration in an underlying class action pending in federal court. The NLRB's order is contrary to United States Supreme Court precedent and this Court's prior decision. See *Stolt-Nielsen S.A. v. Animal Feeds Int'l Corp.*, 130 S. Ct 1758 (2010) (holding that, when an agreement is silent on the issue of class-wide arbitration, the parties must proceed with arbitration on an individualized basis); *AT&T Mobility v. Concepcion*, 131 S. Ct 1740 (2011) (holding that arbitration agreements must be enforced according to their terms pursuant to the Federal Arbitration Act); *Am. Express v. Italian Colors Rest.*, 133 S. Ct. 2304 (2013) (reiterating that "courts must rigorously enforce arbitration agreements according to their terms"); and *Richards v. Ernst & Young, LLP*, 744 F.3d 1072 (9th Cir. 2013) (confirming enforceability of class action waivers in arbitration agreements, explaining that it would not defer to the *D.R. Horton* rationale "because it conflicts with the explicit pronouncements of the Supreme Court concerning the policies undergirding the Federal Arbitration Act ('FAA')").

This Court has jurisdiction over this matter because the alleged unfair labor practices in question were alleged to have been engaged in this Circuit.

**WHEREFORE**, Petitioners respectfully pray that this Court review and set aside the NLRB's order in its entirety and that Petitioners receive any further relief to which they may be entitled.

Dated: August 27, 2015      SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Gregg A. Fisch  
Gregg A. Fisch  
Paul Berkowitz  
Attorneys for Petitioners  
COUNTRYWIDE FINANCIAL CORPORATION;  
COUNTRYWIDE HOME LOANS, INC.; and  
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